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Attorneys for Defendants Green United, LLC and Wright W. Thurston and Relief Defendants

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION**

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

GREEN UNITED, LLC, et al.,

Defendants.

**DEFENDANTS GREEN UNITED,
LLC, AND WRIGHT W. THURSTON,
AND RELIEF DEFENDANTS'
NOTICE OF SUPPLEMENTAL
AUTHORITY**

Case No. 2:23-cv-00159-BSJ

Judge Bruce S. Jenkins

Defendants Green United, LLC and Wright W. Thurston and Relief Defendants True North United Investments, LLC and Block Brothers, LLC (collectively referred to herein as the “Defendants”), through counsel of record, pursuant to DUCivR 7-1(c), hereby submit this Notice of Supplemental Authority relevant to their Motion to Dismiss the Complaint filed by the Plaintiff Securities and Exchange Commission (“SEC”) (Dkt. No. 23).

Defendants’ Motion to Dismiss was filed on May 19, 2023. The SEC’s opposition to Defendants’ Motion to Dismiss is due on June 30, 2023. On June 1, 2023, about two weeks after Defendants’ filed their Motion to Dismiss, Rep. Patrick McHenry (R-NC), Chairman of the Financial Services Committee and Rep. Glenn Thompson (R- PA), Chairman of the Agriculture Committee of the United States House of Representatives introduced a Digital Asset Market Structure Discussion Draft (the “Discussion Draft”) intended to serve as a legislative framework to provide digital asset firms with regulatory certainty as well as adequate consumer protection. It also is intended to fill the gap that exists between the authorities of the Commodity Futures Trading Commission (“CFTC”) and the SEC. The Discussion Draft directly impacts the classification of digital assets as securities or commodities, the regulation of SEC intermediaries, regulation of CFTC intermediaries, regulatory coordination, innovation and coordination, and regulatory transition. Moreover, it also provides specifics for an exemption regime for the offer and sale of digital assets pursuant to an investment contract. A copy of the Discussion Draft is attached as an **Exhibit 1**.

The Discussion Draft is relevant to this matter because Defendants argue in their Motion to Dismiss that the SEC's efforts at regulation by enforcement should be rejected based on, among other things, the Major Questions Doctrine. That doctrine holds that issues regarding the regulation

of a significant segment of the economy, such as digital assets, are reserved for Congress. (*See* Defs.’ Mot. to Dismiss, Dkt. 23, at pp. 21-26). In the Memorandum in support of the Motion to Dismiss, Defendants noted that Rep. McHenry had indicated that legislation to regulate the digital asset markets would soon be forthcoming. *Id.* The Discussion Draft is the beginning of that legislative process and thus a supplemental authority on the issue. The fact that it has been introduced and that hearings with respect to it have begun, confirms that Congress intends to legislate in this area and craft an appropriate digital asset regulatory framework. This is fully consistent with what the Major Questions Doctrine requires.

Finally, the Discussion Draft also is relevant because it underscores the ongoing need for clarity in digital asset regulation, thus strongly supporting defendants’ due process and fair notice arguments. *See* Defs.’ Mot. to Dismiss, at pp. 20, 27-37. In contrast to regulation by enforcement, the Discussion Draft calls for an orderly process in which the CFTC and the SEC are required to jointly issue rules that define terms such as “digital assets.”

DATED this 15th day of June 2023.

PARSONS BEHLE AND LATIMER

/s/ Jonathan D. Bletzacker

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DAVIS WRIGHT TREMAINE, LLP

/s/ Stephen T. Gannon

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*Attorneys for Defendants Green United, LLC,
and Wright W. Thurston and Relief Defendants*

CERTIFICATE OF SERVICE

On this 15th day of June 2023, I hereby certify that I electronically filed a true and correct copy of the foregoing with the Clerk of the Court using the CM/ECF system, which sent notification and service to all counsel of record.

/s/ Jonathan D. Bletzacker